

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,046

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his request for medicaid coverage for a full size electric hospital bed. The issue is whether this item is medically necessary. The petitioner also raises several procedural issues concerning the way the Department handled his initial request and his fair hearing. Following an initial Recommendation by the hearing officer in this matter (dated January 8, 1996) the Board, in an Order dated January 23, 1996, remanded the matter to the hearing officer for the taking of additional evidence "regarding the availability to the petitioner of reasonable alternatives to a full size hospital bed in meeting his medical needs."⁽¹⁾ A hearing was held on February 7, 1996, in which the petitioner, per his request, participated by phone.

FINDINGS OF FACT

The petitioner is permanently disabled. His lower body is totally paralyzed and he has significant weakness in his torso and upper body. He suffers from neuropathy and degenerative joint disease that makes virtually all motion and movement severely painful. He also has impaired respiratory ability. One aspect of the petitioner's condition that is crucial in this proceeding is frequent leg spasms while he is sleeping, which cause him severe nightly discomfort and bruising, and which interrupt his sleep.

Despite the above limitations the petitioner tries to maintain an independent lifestyle. He uses a powered wheelchair and currently has a standard-size electric hospital bed that enables him to raise, lower, and adjust the position of his body to facilitate sleep and transferring to and from his wheelchair. The petitioner lives with an individual who helps him, and he also has a professional personal care attendant who comes in during the day.

The bed the petitioner is currently using was apparently purchased a few years ago through medicare. At the time, the "standard size" was the only fully electric hospital bed on the market available for home use. While this bed offers the petitioner several features that are necessary for comfort, independent transferring, and accommodating his need to frequently change position, the size of the bed is constricting in that the petitioner's leg spasms cause him to hit his legs against the wall on one side of the bed and his wheelchair (which must be placed next to the bed to allow the petitioner to

independently access it when he gets up) on the other side. This causes the petitioner severe pain and severely interrupts his sleep.

Last summer, the petitioner learned that a "full size" fully electric hospital bed had come on the market for home use, and he made a request for medicaid authorization to purchase one. The Department's medicaid authorization division instructed him to provide documentation of the "medical necessity" of this item. On August 28, 1995, the petitioner's doctor submitted the following statement:

DIAGNOSIS:

Pertinent Diagnoses: 344.00 Quadriplegia.

355.90 Neuropathy.

Secondary Diagnoses: 715.90 Degenerative Joint Disease.

FUNCTIONAL LEVEL:

Non-ambulatory, power wheelchair user with significant trunk and upper body weakness; significantly impaired respiratory ability; severe pain on all motion.

DURATION OF NEED:

On-going.

CURRENT EQUIPMENT:

Standard size fully electric hospital bed [Invacare Mobilite].

ITEMS PRESCRIBED:

Full size fully electric hospital bed [Smith & Davis Rehabilitation Bed Model RHB54].

THERAPEUTIC RESULTS EXPECTED:

Pt. requires power-operated adjustable hospital bed for the following reasons [note: results #1 - #3 are unchanged from the hospital bed prescription pt. currently uses]:

- 1) Provide adequate respiratory function by elevating head for sleeping.
- 2) Provide independent pt. positioning, i.e., raise/lower pt. to/from upright position.
- 3) Effect safe independent transfers to/from wheelchair (requires height adjustability).

THERAPEUTIC RESULTS EXPECTED (continued):

Pt. requires full size power-operated adjustable hospital bed for the following reasons:

- 4) Reduce bruises and contusions resulting from pt. hitting the bed/wall and pt's wheelchair (parked parallel to bed for self-transferring); bruises and contusions result from pt's. severe night time spasms (especially leg spasms).
- 5) Provide pt. with adequate rest, i.e., to sleep through the night (pt. currently wakes several times during the night from the pain associated with pt's. hitting the bed/wall and wheelchair); slight reduction in pain and/or antispasmodic medications may also result.

PHYSICIAN'S CERTIFICATION:

I certify that equipment prescribed is a necessary part of my course of treatment and is not for precautionary or standby purposes.

On November 15, 1995, the medicaid division issued a "notice of decision" that contained only the following rationale: "Denied full-size hospital bed for lack of medical necessity (pt not obese)".

A hearing was initially convened on November 29, 1995, at which time the Department, for the first time, informed the petitioner that his request had been denied because the medicaid division also felt that there were alternatives to address the problem of the petitioner's leg spasms, such as moving his present bed away from the wall and using padding around the wheelchair. The hearing was continued to allow the petitioner to submit medical documentation as to why this would not be practical.

The petitioner then submitted the following statement from his doctor, dated November 30, 1995:

ALTERNATIVES TO PRESCRIBED EQUIPMENT:

There are no practical alternatives to the prescribed full size, full electric hospital bed for this pt.:

- 1) Due to pt's. significant upper body weakness, pt. is physically incapable of lifting, maneuvering, and setting into place the body length padding that would be necessary to protect pt. from the bruises and contusions which currently result from pt. hitting the wall/wheelchair, consequent to pt's. severe night time spasms.
- 2) Pre-positioning paddling or any other protective measures or devices would eliminate pt's. ability to independently transfer to/from pt's. wheelchair.
- 3) Any constraining/protective device is likely to result in pt. getting less than the 4 - 4 1/2 hours sleep per night pt. currently averages.

At the remand hearing the petitioner described the placement of the bed in his bedroom and how he transfers himself to and from the bed to his wheelchair. He stated that he sleeps alone in the bed and accomplishes these transfers independently. From the petitioner's uncontradicted testimony it must be concluded that in order to be able to transfer himself independently the petitioner must keep his wheelchair placed directly alongside of the bed while he is in the bed. It must also be concluded that the

petitioner does not always have access to assistance if he were not able to transfer himself independently.

The petitioner admitted that it would be possible to install padding along the wall on one side of his bed that would soften the impact of his legs hitting the wall when he has spasms during the night, and which would not restrict his sleeping space--i.e., the bed could be moved out from the wall to accommodate the padding.

Much of the hearing focused, therefore, on whether an effective and practical means exists to pad the petitioner's wheelchair while he is in bed. However, despite his insistence that padding his wheelchair would not be a suitable alternative, the petitioner adamantly refused to allow the Department or the hearing officer to contact his doctor to elicit further comment and opinion regarding this issue. The petitioner maintains that his doctor, in the written statements cited above, has already stated "unequivocally" that a larger bed is medically necessary for him and that padding is not practical. Solely on the basis of his doctor's general comments, however, which were hearsay⁽²⁾ and unsupported by anything more than the petitioner's own testimony, the hearing officer is unable to conclude that it would be impractical or unreasonable for the petitioner to be able to independently put in place padding against his wheelchair that would protect him from pain and injury if his legs hit it during the night.

ORDER

The Department's decision denying medicaid coverage for a full-size electric hospital bed is affirmed.

REASONS

There is no dispute in this matter that some sort of electric hospital bed is medically necessary for petitioner, and is covered under medicaid. See Medicaid Manual (MM) § 841. The issue is whether a full-size electric hospital bed medically necessary given the fact that the petitioner already has a smaller "standard-size" bed of that type.

MM § 151.1(A) provides that no payment will be made for: "Items and services not reasonable and necessary for the treatment or diagnosis of illness or injury, or to improve the functioning of a malformed body member." In this case, uncontroverted medical evidence establishes that a full size bed would be one way to reduce the pain, bruising, and interrupted sleep the petitioner suffers from due to his nightly leg spasms. Contrary to the hearing officer's prior Recommendation, however, it cannot be concluded on the basis of the evidence presented that an alternative means of protection, such as padding, is unreasonable or impractical.

In his prior Recommendation that the Department's decision be reversed the hearing officer took into considerable account what he felt to be the Department's procedural mishandling of the petitioner's request. Because of this the hearing officer recommended that the petitioner, in effect, be given the benefit of the doubt regarding the weight and sufficiency of his doctor's written statements (supra) regarding the lack of alternatives to a larger bed. At the remand hearing, however, the hearing officer repeatedly advised the petitioner that regardless of the Department's prior handling of his case, the Board was unlikely to consider the prior written statements of his doctor (see supra) sufficient to establish that the use of padding or other alternatives would not reasonably and practically address the problems cited by the petitioner for requesting a larger bed.⁽³⁾

Despite the above admonition, however, the petitioner steadfastly refuses to allow the Department or the hearing officer access to his doctor to question her in more detail as to the reasonableness and practicality of padding as an alternative to a larger bed. The hearing officer and the Board can only conclude from this refusal either that the petitioner has something to hide by not allowing the Department and the Board to obtain his doctor's input on this question or that he inadvisedly overestimates the degree to which his doctor's prior statements can be considered dispositive of this issue.

In light of the above, it must be concluded that the petitioner has not demonstrated that a full-size electric hospital bed is medically necessary to alleviate the pain and bruising caused by his nightly leg spasms.⁽⁴⁾ Therefore, the Department is not bound by the regulations to provide medicaid coverage for this matter.

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1. See Fair Hearing Rule No. 18.

2. Hearsay medical evidence, though admissible under Human Services Board Rule No. 12, is nonetheless subject to the hearing officer's judgement as to the weight it should be accorded (see infra).

3. The petitioner does not dispute that he composed and prepared his doctor's prior written statements and that his doctor merely signed her name to the statements the petitioner provided her with.

4. In light of the above, the petitioner's procedural claims become even more problematic. Although the hearing officer would still find that the Department did not provide adequate, timely, and comprehensible notices to the petitioner, the petitioner's unreasonable refusal to allow the Department and the Board to subsequently develop the medical evidence in this case effectively negates any procedural claim for relief the petitioner can reasonably make. If the petitioner should have a change of heart and would be willing to allow the Department to address with his doctor the question of specific alternatives, he is, of course, free to reapply for a full size electric hospital bed. The Board wishes to emphasize the petitioner's right to reapply for medicaid coverage of a full-size hospital bed.